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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1470. ~~1047~~ ~~598~~ 260

GUILLAUME ABADIE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 22, 1889.

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 23, 1889.

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1 *Complaint.*

In the United States Circuit Court, Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
GUILLAMME ABADIE, Defendant.

Now come The United States of America, by John T. Carey, United States attorney for the northern district of California, and complain of Guillamme Abadie, defendant herein, and for cause of action allege—

I. That defendant is now and at all times named in this complaint was a resident and inhabitant of the northern district of California.

II. That the following-described lands lying and being situate in the county of Monterey, State of California, and in the said northern district of California, and within the jurisdiction of this honorable court, are and at all times mentioned in this complaint were public lands of and belonged to the plaintiffs herein, The United States of America, to wit: Sections one (1), two (2), three (3), nine (9), eleven (11), thirteen (13), fifteen (15), twenty-three (23), twenty-five (25), and fractional sections five (5), eight (8), twenty-one (21), and twenty-seven (27), all in township twenty-two (22) south, range ten (10) east, Mount Diablo base and meridian.

III. That the foregoing lands have all been heretofore surveyed and sectionized by authority of the United States, and that the township plats thereof are now on file in the United States local land office at San Francisco, California, and that said lands are subject to settlement and entry under the public land laws of the United States.

IV. That an affidavit, as required by section 2 of an act of Congress entitled "An act to prevent unlawful occupancy of the public lands," passed and approved on February 25th, 1885, made by C. F. Lanthier, Antoine Esperance, A. Braidon, William Brinan, A. J. Collins, John W. Martin, and William C. Dudley, citizens of the United States, on the 16th day of July, 1888, before Thomas
2 Renison, then and there a duly appointed, qualified, and acting notary public for Monterey county, California, has heretofore, to wit, on July 20, 1888, been filed with and it now remains on file with the United States attorney for said northern district of California.

V. That said defendant, Guillamme Abadie, heretofore constructed and erected a fence and enclosure along and upon the lines and boundaries following, to wit: Beginning at the southeast corner of section twenty-five (25), in township twenty-two (22) south, range ten (10) east, Mount Diablo base and meridian, thence north and upon the east line of said township to the northeast corner of said

township; thence west along and upon the north line of said township twenty-two south, range ten (10) east, to a point where the east grant line of the San Bernardino rancho intersects said north line of said township; thence southeasterly along and upon the eastern line of said San Bernardino rancho to a point where said rancho line intersects the south line of section twenty-seven (27), in said township and range, and thence east along and upon the south line of sections twenty-seven (27), twenty-six (26), and twenty-five (25), in said township and range, to the place of beginning; which said fence and enclosure is a continuing and connecting inclosure, enclosing the lands in said township, situate and being within the boundaries and lines along and upon which said fence and enclosure, built as hereinbefore described, now is; that the following-described public lands are unlawfully included within the fence and enclosure hereinbefore described, erected and constructed by defendant as foresaid, and to which defendant, at the time of erecting and constructing said fence and enclosure, had no claim or color of title made or acquired in good faith or an asserted right thereto by or under claim made in good faith with a view to entry thereof at the proper land office or at any United States land office under the general laws of the United States, to wit: Sections one (1), two (2), three (3), nine (9), eleven (11), thirteen (13), fifteen (15), twenty-three (23), twenty-five (25), and fractional sections five (5), eight (8), twenty-one (21), and twenty-seven (27), all in township twenty-two (22) south, range ten (10) east, Mount Diablo base and meridian.

VI. That said defendant has continuously ever since said fence and enclosure, as hereinbefore described, was erected and
3 constructed as aforesaid and does now keep in repair, maintain, and control said fence and enclosure, thereby unlawfully fencing and enclosing said public lands hereinbefore last described, not having had at any time and not having now any claim or color of title made or acquired in good faith or an asserted right thereto by or under claim made in good faith with a view to entry thereof at the proper land office of the United States under the general laws of the United States.

VII. That said defendant, by so fencing and enclosing said public lands hereinbefore last described and by keeping in repair and maintaining said fence and enclosure as aforesaid, has prevented and obstructed and is preventing and obstructing persons from peaceably entering upon said lands, and has prevented and obstructed and is preventing and obstructing persons entitled so to do from establishing a settlement and residence upon said lands, and has prevented and obstructed and is preventing and obstructing free passage over and through said lands.

VIII. That said defendant has not gone upon any of said lands and made a settlement thereon, nor has he improved or cultivated any of said lands, claiming any color of title made or acquired in good faith or any asserted right thereto by or under claim made in good faith with a view to entry thereof in the proper land office of the United States under the general laws of the United States or under the public land laws thereof.

IX. That there are more than one hundred and sixty acres of public lands by this complainant alleged to be unlawfully inclosed.

Wherefore plaintiffs pray that it may be adjudged that said fence and enclosure and the keeping in repair and maintaining thereof is an unlawful inclosure of public lands, and that said fence and enclosure may be destroyed by the United States marshal unless defendant shall remove the same within five days after the order or judgment of the court adjudging the same to be unlawful and ordering its destruction shall have been entered, and for all costs.

JOHN T. CAREY,
United States Attorney.

Endorsed: Filed Sept. 14th, 1888. L. S. B. Sawyer, clerk.

4 *Summons.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
GUILLAMME ABADIE, Defendant.

Action brought in the said circuit court and the complaint filed in the office of the clerk of said circuit court in the city and county of San Francisco.

The President of the United States of America, Greeting, to Guillamme Abadie:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the circuit court of the United States, ninth circuit, in and for the northern district of California, and to file your plea, answer, or demurrer to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the clerk of said court, in the city and county of San Francisco, within ten days after the service on you of this summons, if served in this county; or if served out of this county, then within thirty days, or judgment by default will be taken against you.

The said action is brought to obtain a judgment declaring the enclosing by you and fencing in of certain lands and premises, the property of plaintiff, to be unlawful, and that said enclosure and fence may be destroyed by the United States marshal unless, within five days after the judgment of this court, the said enclosure and fence shall be removed by the defendant, together with the costs of this action; all of which is more fully set out in the original complaint on file herein, to which reference is hereby made, and if you fail to appear and plead, answer, or demur, as herein required, your default will be entered and the plaintiff will apply to the court for the relief demanded in the complaint herein.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States, this 14th day of [SEAL.] September, in the year of our Lord one thousand eight hundred and eighty-eight and of our Independence the 113th.

L. S. B. SAWYER, *Clerk.*

5 Endorsed.

UNITED STATES MARSHAL'S OFFICE,
NORTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 29th day of Sept., 1888, and personally served the same on the 29th day of Sept., 1888, by delivering to and leaving with Guillamme Abadie, said defendant named therein, personally, at the county of Monterey, in said district, a certified copy thereof, together with a copy of the complaint, certified to by L. S. B. Sawyer, clerk, attached thereto.

J. C. FRANKS,
U. S. Marshal,
By L. B. HOPKINS, *Deputy.*

San Francisco, Oct. 1st, 1888.

Filed October 1, 1888.

L. S. B. SAWYER, *Clerk,*
By F. D. MONCKTON,
Deputy Clerk.

Demurrer to Complaint.

In the Circuit Court of the United States, 9th Circuit, Northern District of California.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
GUILLAMME ABADIE, Defendant. } No. 9812.

The above-named defendant demurs to the complaint herein upon the grounds following, to wit:

1. The said complaint does not state a cause of action.

2. The court has no jurisdiction of the subject-matter of the action.

3. Said complaint is ambiguous, uncertain, and unintelligible in the following particulars, namely:

6 (*a.*) It does not appear from said complaint how or in what manner the keeping, maintaining, or repairing of the fence or the enclosure mentioned in said complaint has prevented or obstructed or how it is preventing or obstructing any person or persons from entering into or upon the land within said fence or enclosure.

(*b.*) It does not appear from said complaint how or in what manner the keeping, maintaining, or repairing of said fence or enclosure

is unlawful, nor how it has prevented or obstructed or is preventing or obstructing a free passage over or through the land enclosed by said fence or enclosure.

Wherefore defendant prays the judgment of this court whether he shall further answer make to said complaint.

Dated San Francisco, December 6th, 1888.

HERRMANN & SOTO,
Attorneys for Defendant.

We, the undersigned, attorneys and counsel for the above-named defendant, Guillamme Abadie, hereby certify that in our opinion the above demurrer to the plaintiff's complaint is well founded in point of law.

HERRMANN & SOTO,
Attorneys and Counsel for the Defendant, Guillamme Abadie.

Endorsed: Received a copy of the within demurrer to complaint this 6th day of December, 1888. John T. Carey, attorney for plaintiff. Filed December 6, 1888. L. S. B. Sawyer, clerk.

7 At a stated term, to wit, the November term, A. D. 1888, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 24th day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable Lorenzo Sawyer, circuit judge; the Honorable George M. Sabin, U. S. district judge, district of Nevada.

Order Overruling Demurrer.

THE UNITED STATES OF AMERICA
v.
G. ABADIE. } No. 9812.

This cause, heretofore argued and submitted to the court for consideration and decision upon the demurrer to the complaint herein, having been duly considered, it is ordered that said demurrer be, and the same hereby is, overruled, with leave to the defendant to answer herein on the usual terms.

8 *Answer.*

In the United States Circuit Court, Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
GUILLAMME ABADIE, Defendant. } No. 9812.

Comes now the above-named defendant and, answering the com-

plaint herein, he denies, generally and specifically, each and every allegation contained in said complaint.

Wherefore defendant prays to be hence dismissed.

Jan. 11, '89.

HERRMANN & SOTO,
Attorneys for Defendant.

Endorsed: Received a copy of the within answer this eleventh day of January, 1889. John T. Carey, U. S. district attorney, attorney for plaintiffs. Filed January 11, 1889. L. S. B. Sawyer, clerk.

9 *Stipulation Waiving Jury Trial.*

In the United States Circuit Court, Ninth Circuit, Northern District, State of California.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
GUILLAMME ABADIE, Defendant. } No. 9812.

It is hereby stipulated by the respective parties hereto that a jury trial be, and the same is hereby, expressly waived, and that this action be tried before the court without a jury.

Dated March 1st, 1889.

JNO. T. CAREY,
United States Attorney.
HERRMANN & SOTO,
Attorneys for Defendant.

Endorsed: Filed March 1st, 1889. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

Findings.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES, Plaintiff,
vs.
GUILLAMME ABADIE, Defendant.

This cause came regularly on to be heard before the court on the 1st day of March, A. D. 1889, sitting without a jury, a jury
10 trial having been waived by the respective parties hereto in writing. The case was heard and submitted upon an agreed statement of facts in writing filed herein.

And the court, having duly considered the same and the arguments of counsel for the respective parties, now finds the following findings of facts and conclusions of law thereon:

The court adopts the agreed statement of facts, with the diagram, Exhibit "A," thereto attached, filed herein, and hereby declares the same to be its findings of facts in this case, and they are considered as engrossed herewith.

Conclusions of Law.

Upon the foregoing facts the court finds as conclusions of law—

I.

That the said fences erected and maintained by defendant from points "A" to "B," from "B" to "C," from "C" to "D," and from "D" to "A" (as shown on Exhibit "A") are unlawful and are unlawfully maintained by defendant so far as they enclose public lands not owned by defendant and to which he is not seeking to acquire title under the provisions of the acts of Congress relative thereto.

II.

That said fences are unlawfully maintained by defendant upon said sections five (5), three (3), two (2), one (1), thirteen (13), twenty-five (25), twenty-seven (27), twenty-one (21), and section nine (9), township 22 south, as shown by said Exhibit "A," hereby referred to, and that the same must be removed by defendant.

III.

That The United States, plaintiff, is entitled to a judgment in this action as prayed for in the complaint herein and in accordance with these findings, and that said defendant be ordered to remove said fence or fences from each and every section of land mentioned in the second finding herein within thirty days from the date of entry of judgment herein.

And judgment is hereby ordered to be entered herein in accordance herewith and for costs.

Dated March 15th, 1889.

GEO. M. SABIN, *Judge.*

Endorsed: Filed March 15th, 1889. L. S. B. Sawyer, clerk.

11 *Enrollment.*

In the Circuit Court of the United States, Northern District of California.

THE UNITED STATES OF AMERICA
vs.
GUILLAMME ABADIE.

The complainant filed its bill of complaint herein on the 14th day of September, 1888, which is hereto annexed.

A summons to appear and answer herein was thereupon issued, which summons is hereto annexed.

A demurrer was filed herein on the 6th day of December, 1888, which is hereto annexed.

An order overruling said demurrer was made and entered herein on the 24th day of December, 1888, a copy of which order is hereto annexed.

An answer was filed herein on the 11th day of January, 1889, which is hereto annexed.

A stipulation waiving jury trial was filed herein on the 1st day of March, 1889, which stipulation is hereto annexed.

Findings were filed herein on the 15th day of March, 1889, and are hereto annexed.

Thereafter a final decree was filed and entered herein in the words and figures following, to wit:

Decree.

In the Circuit Court of the United States for the Ninth Circuit in and for the Northern District of California.

UNITED STATES, Plaintiff,
vs.
GUILLAMME ABADIE, Defendant. } No. 9812.

This cause came on regularly for trial in the above-named court on the first day of March, A. D. 1889, the court sitting without a jury, a jury having been expressly waived by both parties. Assistant United States attorney appeared as counsel for plaintiff and Herrmann & Soto as counsel for defendant. The cause was heard and submitted to the court upon an agreed statement of facts, which statement was duly filed with the papers in the cause.

The court thereupon, having fully considered the cause, duly made and caused to be filed its findings of fact and conclusions of law, and ordered judgment to be entered in accordance therewith.

Wherefore it is by the court ordered, adjudged, and decreed that the following-described fence and inclosure—that is to say, the fence and inclosure erected and claimed and maintained by the defendant herein in and upon sections five, three, two, one, thirteen, twenty-five, twenty-seven, twenty-one, and nine, in township twenty-two south, range ten east, Mount Diablo meridian—be, and the same is hereby, declared to be unlawful.

And it is further ordered, adjudged, and decreed by the court that the defendant herein remove said fence and inclosure from each of said sections within thirty days from the date of the entry of this judgment, and that unless the same shall be removed by the defendant accordingly and within five days after the expiration of said thirty days the said fence and inclosure be destroyed in a summary way by the United States marshal for the said northern district of California.

And it is further ordered, adjudged, and decreed by the court

that the plaintiff have and recover its costs herein incurred against the defendant, taxed at $271.64.

Dated March 15th, 1889. GEO. M. SABIN, *Judge.*

Endorsed: Filed and entered March 15th, 1889. L. S. B. Sawyer, clerk.

13 *Memorandum of Costs, etc.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE UNITED STATES, Plaintiff, *vs.* GUILLAMME ABADIE, Defendant. } Memorandum of Costs and Disbursements.

Disbursements.

Marshal's fees	$31 04
Clerk's fees	13 90
Witness' fees—eleven witnesses—mileage and per diem	216 70
Docket fee of U. S. attorney	10 00
	$271 64

Taxed at ---------- L. S. B. SAWYER, *Clerk.*

UNITED STATES OF AMERICA, *District of California, City and County of San Francisco,* } *ss:*

John T. Carey, being duly sworn, deposes and says that he is the attorney for The United States, plaintiff in the above-entitled cause, and as such is better informed relative to the above costs and disbursements than the said United States.

That the items in the above memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

JOHN T. CAREY.

Subscribed and sworn to before me this 18 day of March, A. D. 1889.

F. D. MONCKTON,
Commissioner of U. S. Circuit Court, Nor. District of California.

14 To Messrs. Herrmann and Soto, attorneys for defendant:

You will please take notice that on Wednesday, the 20th day of March, A. D. 1889, at the hour of 10 o'clock a. m., I will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed, pursuant to rule of said court in such case made and provided.

JOHN T. CAREY,
Attorney for United States.

(Endorsed:) Service of within memorandum of costs and disbursements and receipt of a copy thereof acknowledged this 18th day of March, A. D. 1889. Herrmann & Soto, attorneys for defendant. Filed this 18th day of March, A. D. 1889. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

Clerk's Certificate to Enrolled Papers.

Whereupon said pleadings, summons, copy of order, stipulation, findings, final decree, and a memorandum of taxed costs are hereto annexed, said decree being signed, filed, and enrolled, pursuant to the practice of said circuit court.

Attest, etc.: L. S. B. SAWYER, *Clerk*,
[SEAL.] By F. D. MONCKTON, *Deputy Clerk*.

Endorsed: Enrolled papers. Filed March 15th, 1889. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

15 *Special Appearance for Defendant.*

In the United States Circuit Court, 9th Circuit, Northern District of California.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
GUILLAMME ABADIE, Defendant. } No. 9812.

To the clerk of said court:

The defendant having served notice of motion to set aside the service of the summons herein and to vacate and quash said summons upon the grounds that this action is one in equity and not at law; that jurisdiction of the person of the defendant can be obtained herein by the service of a subpœna and not by the service of a summons, and that this court has not obtained jurisdiction of the person of the defendant by the service of the summons herein, you will please enter our appearance specially as solicitors and counsel for said defendant for the sole purpose of objecting to the jurisdiction of the said court over the person of the defendant, pursuant to said notice of motion, and to urge the same. The appearance is entered for no other purpose than as aforesaid in order that steps may not be taken against said defendant, who is not in any manner before the court nor subject to its jurisdiction.

Dated San Francisco, October 29th, 1888.

HERRMANN & SOTO,
Solicitors and Counsel for Defendant.

Endorsed: Filed Oct. 29, 1888. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

16 *Notice of Motion to Quash Summons.*

In the United States Circuit Court, Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
GUILLAMME ABADIE, Defendant. } No. 9812.

To the above-named plaintiffs and John T. Carey, Esq., United States attorney, attorney for said plaintiffs:

You and each of you will please take notice that on Monday, the 28th day of October, 1888, at the hour of 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, and at the court-room of said court, in the United States Appraisers' building, at the northeast corner of Washington and Sansome streets, in the city and county of San Francisco, State of California, Guillaume Abadie, the defendant, sued herein as Guillamme Abadie, and upon whom the summons issued herein has been served, specially appearing herein in that behalf by Herrmann & Soto, his attorneys and counsel, will move said court to set aside the service of the summons herein made on said defendant Abadie and to vacate and quash said summons.

Said motion will be made upon the grounds following, to wit:

1. It appears upon the face of the complaint herein that this suit is one in equity and not at law.

2. That the process whereby jurisdiction of the person of this defendant should be obtained is a subpœna and not a summons, as required by rule 7, Rules of Practice for the Courts of Equity of the United States, prescribed by the United States Supreme Court.

3. That by the service upon defendant of the summons issued herein the court has not obtained jurisdiction over the person of said defendant.

The said motion will be based upon all the papers, records, and proceedings herein, and more particularly upon the complaint
17 filed herein on September 14th, 1888, the original summons issued herein on said day, together with the marshal's return thereon, and on this notice.

Yours, etc., HERRMANN & SOTO,
Attorneys and Counsel for Defendant Abadie,
Especially Appearing for this Motion,
303 *California St., Rooms* 22, 23, *and* 24, *San Francisco, Cal.*

Dated San Francisco, October 23rd, 1888.

Endorsed: Received a copy of the within notice of motion this 23rd day of October, 1888. John T. Carey, U. S. attorney, attorney for the plaintiffs. Filed October 23rd, 1888. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

Notice of Motion to Set Aside Service of Summons and to Quash Summons.

In the United States Circuit Court, Ninth Circuit, Northern District of California.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
GUILLAMME ABADIE, Defendant. } No. 9812.

To the above-named plaintiffs and John T. Carey, Esq., United States attorney, attorney for said plaintiffs:

18 You and each of you will please take notice that on Monday, the 29th day of October, 1888, at the opening of the court on that day or as soon thereafter as counsel can be heard, at the court-room of said court, in the United States Appraisers' building, at the northeast corner of Washington and Sansome streets, in the city and county of San Francisco, State of California, Guillaume Abadie, the defendant sued herein as Guillamme Abadie, and upon whom the summons issued herein has been served, specially appearing herein in that behalf by Herrmann & Soto, his attorneys and counsel, will move said court—

To set aside the service of the summons herein made on said defendant Abadie and to vacate and quash said summons.

Said motion will be made upon the grounds following, to wit:

1. It appears upon the face of the complaint herein that this suit is one in equity and not at law.

2. That the process whereby jurisdiction of the person of this defendant should be obtained herein is a subpœna and not a summons, as required by Rule 7 of the Rules of Practice for the Courts of Equity of the United States, prescribed by the United States Supreme Court.

3. That by the service upon the defendant of the summons issued herein this court has not obtained jurisdiction over the person of said defendant.

The said motion will be based upon all the papers, records, and proceedings herein, and more particularly upon the complaint filed herein on September 14th, 1888, the original summons issued herein on said day, together with the marshal's return thereon, filed herein October 1st, 1888, and on this notice.

Yours, etc., HERRMANN & SOTO,
Attorneys and Counsel for Defendant Abadie,
Especially Appearing for this Motion,
No. 303 California Street, Rooms 22, 23, and 24 San Francisco, Cala.

Dated San Francisco, October 24th, 1888.

Endorsed: Received a copy of the within notice of motion this 24th day of October, 1888. John T. Carey, United States attorney, attorney for plaintiffs. Filed Oct. 24, 1888. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

19 At a stated term, to wit, the November term, A. D. 1888, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 26th day of November, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order Deny'g Mo. to Quash Summons.

THE UNITED STATES OF AMERICA
vs.
GUILLAUME ABADIE. } No. 9812.

This cause, heretofore argued and submitted to the court for consideration and decision upon the motion to quash the service of summons herein, having been duly considered, it is ordered that said motion be, and the same hereby is, denied. Ordered that the defendant herein have ten days within which to answer herein.

20 *Agreed Statement of Facts.*

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

UNITED STATES, Plaintiff,
v.
GUILLAUME ABADIE, Defendant. } No. 9812.

It is stipulated that Exhibit "A," hereto attached, is a correct diagram of the premises and lands referred to in the complaint.

That in 1873 defendant Abadie erected a picket fence commencing at the letter A, written in red ink on said diagram, running thence east to letter B in red ink, thence south to letter C in red ink, and thence west to letter D in red ink, and northwest to letter A, referred to, being the point of beginning.

That said fence has stood at the places indicated ever since 1873, and that it stands there now.

That ever since 1873 it has been and it is now a good and substantial fence, sufficient to protect the land inclosed by it from the intrusions of stock.

That ever since 1873 the fence has been and it is now claimed by defendant as his property.

That ever since 1873 said fence has inclosed and it still incloses all the land shown on said diagram to be inclosed by it.

That all even-numbered sections within said inclosure, except section 2, were at the commencement of this action and are now the property of defendant, to which he held and holds title, amounting to 4,998 and $\frac{1}{100}$ acres.

That prior to the erection of the said fence in 1873 defendant had title and he still has to section 4, fractional section 8, section 10,

section 14, and section 22 within the inclosure, and also all
21 of fractional section 16, aggregating 3,070 acres.

That all of the balance of the land remaining within the inclosure, after deducting defendant's land as above described, became subject to entry and settlement under the pre-emption and homestead laws of the United States on May 24th, 1886.

That Exhibit "B," hereto attached, is a correct statement of all entries and filings made under the pre-emption, homestead, and timber culture laws of the United States before and after May 24th, 1886, upon the lands referred to as having become subject to entry and settlement on that day, and also of the status of the filings and entries at the commencement of this action.

That at all times since the erection of the fence referred to there have been three gates opening into the inclosure, which have been kept unlocked.

That the line of the fence above described from D to A runs along the line between the lands described in the complaint and the San Bernardino ranch, which was at the time of the building of said fence and is now a confirmed private Mexican grant.

That there are now pending in the superior court of Monterey county, California, on motion for a new trial, two actions commenced by defendant herein in October, 1887, to recover the possession of lot 1 and S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of sec. 9 from Antoine Esperance, and S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of said sec. 9 from Charles B. Lanthier.

That the affidavit required by section 2 of the act under which this action was brought was duly filed and in proper form and in all respects as required by said section with the proper U. S. attorney.

That Exhibit "B," wherever under the columns marked "rate per acre" and "purchase-money" figures appear indicating dollars and cents, it shows that the persons named under the head of "name of purchaser," immediately following such figures, have made final entry under the pre-emption laws by paying the purchase price of the land and receiving a certificate of purchase, including, however, among such purchasers Alfred Jorgensen, who has finally entered a portion of section 11, as appears by said exhibit.

22 That the lands included within the inclosure or fence before mentioned amount to $10{,}971\frac{21}{100}$ acres, of which $4{,}998\frac{10}{100}$ acres belong to defendant, as above stated; $5{,}585\frac{73}{100}$ acres have been entered under the homestead or timber culture laws or filed on or finally paid for under the pre-emption laws, and $395\frac{38}{100}$ acres are open to filing entry and settlement under the general land laws of the United States.

JACKSON HATCH,
Ass't U. S. Att'y, for Plaintiff.
HERRMANN & SOTO,
Attorneys for Defendant.

(Here follows diagram marked page 22*a*.)

EXHIBIT B.

Township No. 22 *South, Range No.* 10 *East, M. D., District of* ——.

Description of tract.				Contents.		Rate per acre.		Purchase-money.		Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
E. ½ of N. E. ¼ & S. W. ¼ of N. E. ¼, D. S. 21792; Richard B. Edwards, June 6, '86; July 6, '86.	1															
E. ½ of S. E. ¼ & S. W. ¼ of S. E. ¼ & S. E. ¼ of S. W. ¼; home. del. Alex Braidon; ref'd to com'r 1, 17, '87.																
E. ½ of N. E. ¼ & S. W. ¼ of N. E. ¼ & (sec. 6, T. 20 S., R. 11 E.)	.....	.....	.....	153	66	Homestead act.....				William A. McDermott	Apr. 21, 1887	8606	Amended and corrected June 27, 1888.			
N. W. ¼ of N. E. ¼, N. ½ of N. W. ¼, & S. E. ¼ of N. W. ¼.	.....	.....	.....	160	.....	Homestead act.....				Alexander Braidon.....	May. 24, 1886	7543				
W. ¼ of S. W. ¼, N. E. ¼ of S. W. ½, & N. W. ¼ of S. E. ¼.	.....	.....	.....	160	.....	Homestead act.....				Charles Robertson.....	Aug. 23, 1888	9873				
Obsolete.....	.....	.....	.....	160	.....	Homestead act.....				Jean B. Beilbs.....	Nov. 11, 1885	7111	Attached by Alex. Braidon Sept. 24, '87; ref'd to com'r Aug. 17, '88.			
				160	.....	Timber culture act..				Alexander Braidon.....	May 24, 1886	466	Cancelled by relinquishment Aug. 23, 1888, at 9 a. m.			
Ob.....	.....	.....	.....	160	.....	Timber culture act..				Jean B. Beilbs.....	Nov. 11, 1885	271				
S. W. ¼ of N. W. ¼ & (2)	.....	.....	.....	120	.....	1	25	150	00	William A. McDermott	Feb'y 1, 1887	12448	D. S. 21791.			
S. E. ¼ of N. E. ¼ & N. E. ¼ of S. E. ¼ & (1).	2	.....	.....	120	.....	1	25	150	00	William A. McDermott	Feb'y 1, 1887	12448	D. S. 21791.			
S. ½ of S. E. ¼ & S. ½ of S. W. ¼.	.....	.....	.....	160	.....	1	25	200		Louis Lambert.....	Jan'y 25, 1887	12357	D. S. 21084.			
Cancelled	.....	.....	.....	.....	.....	.....		.....		Univ'y of Cala.....	Sept. 5, 1873	10	App. Nov. 1, 1873, list 1.			
Cancelled	.....	.....	.....	.....	.....	.....		.....		Univ'y of Cala.....	Oct. 24, 1875	20	App. Dec. 1, 1873, list 2.			
S. W. ¼ of N. E. ¼, N. W. ¼ of S. E. ¼, S. E. ¼ of N. W. ¼, & N. E. ¼ of S. W. ¼.	.....	.....	.....	160	.....	Timber culture act..				Jens Jensen.....	May 14, 1886	430				

EXHIBIT B.

Township No. 22 South, Range No. 10 East, M. D., District of ——.—Continued.

Description of tract.				Contents.		Rate per acre.		Purchase-money.		Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
D. S. 20486; Jens Jensen, May 12, '86; May 16, '86, aban.	3															
S. E. ¼ of N. W. ¼, N. E. ¼ of S. W. ¼, & N. ½ of S. E. ¼. Paid.	.....	.....	.....	160	.....	Homestead act.....				Michael Gorman.....	Sept. 13, 1886	8070				
S. W. ¼ of N. W. ¼, W. ½ of S. W. ¼, & S. E. ¼ of S. W. ¼.	.....	.....	.....	160	.....	Timber culture act..				Michael Gorman.....	Sept. 13, 1886	569				
Void.....	.....	.....	.....	160	.....	Timber culture act..				Benito Fernandez.....	Nov. 20, 1885	304				
Void.....	.....	.....	.....	160	.....	Homestead act.....				Benito Fernandez.....	Nov. 20, 1885	7208				
N. ½ of N. E. ¼, S. W. ¼ of N. E. ¼, & N. E. ¼ of N. W. ¼, D. S. 25297; Michael Gorman, Dec. 5, '88; Dec. 18, '88.	4															
All of section.....	.....	.....	.....	.....	.....	.....				State lien selec.....	Dec. 24, 1869	2456	App'd July 1, 1871, list 22.			
S. E. ¼ & S. ½ of S. W. ¼ & (22)...	.....	.....	.....	280	.....	State selec. paid for..				Guillame Abadie.....	Apr. 3, 1883	8913	Patended Oct. 1, 1883.			
N. E. ¼, void.....	5															
N. E. ¼.....	.....	.....	.....	154	40	Timber culture act..				Dominizue G. Lucren..	Nov. 21, 1885	307				
	.....	.....	.....	154	40	Homestead act.....				Charles Peterson.....	June 5, 1886,	7738	Attached by James F. Hart Apr. 7, '87.			
Lot 2, N. W. ¼ of S. E. ¼ & E. ½ of S. E. ¼.	.....	.....	.....	164	07	Homestead act.....				James F. Hart.....	May 24, 1886	7493	Excess 11555 cons'd Apr. 6, 1887, C. E. 12602.			
Lot 1 & fract. N. W. ¼.....	.....	.....	.....	130	38	1	25	174	23	Charles H. Hart.....	June 15, 1887	12901				
Lot 1 & frac. N. W. ¼.....	.....	.....	.....	138	38	Homestead act.....				John A. McLaughlin..	Aug. 9, 1886,	7945	Amended. See sec. 9.			
24	6															
	7															
	8															
All of section (fol.).....	.....	.....	.....	.....	.....	.....				State lien selec.....	Dec. 24, 1869	2458	App'd Jan'y 3, 1871, list 19.			
	9															
				160	.....	Timber culture act..				John T. Fleming.....	May 25, 1886	469	Canceled by relinquishment April 27 '87, at 3.30 p. m.			

W. ½ of N. E. ¼ & N. ½ of N. W. ¼.				160		Timber culture act..	Alfred A. Fancomprie	Apr.	27, 1887	632	
E. ½ of N. E. ¼ & N. ½ of S. E. ¼.				160		Homestead act.....	John A. McLaughlin..	Oct.	9, 1887	7945	Amend. allowed by letter Sept. 9, 1887, "F."
Void.....				155	76	Homestead act.....	Donald Ferrey.....	Nov.	19, 1885	7206	
Void.....				160		Timber culture act..	Donald Ferrey.....	Nov.	19, 1885	301	
E. ½ of N. E. ¼ & N. ½ of S. E. ¼; home. offered Aug. 16, '86, by Jno. A McLaughlin; ref'd to com'r Aug. 18, '86.											
S. ½ of N. W. ¼ & N. ¼ of S.W. ¼, D. S. 21007; Chas. B. Louthier, Nov. 7, '85; May 24, '86.											
Lot 1 & S. E. ¼ of S. W. ¼ & S. ½ of S. W. ¼, D. S. 21033; Antoine Esperiance, Nov. 7, '85; May 24, '86.											
Lot 1 & N. W. ¼ of S. W. ¼ & S. E. ¼ of S. W. ¼ & S. W. ¼ of S. E. ¼, D. S. 21658; Donald Ferry, Nov. 5, '85; June 11, '86.											
10											
All of section.....							State lien selec.....	Dec.	31, 1869	2457	App'd July 1, 1871, list 22.
S ½.....				320		State selec. paid for.	Chas. Gailhard.....	Oct.	15, 1883	9499	Patented May 20, 1884.
11											
N. ¼ of N. E. ¼ & S. W. ¼ of N. E. ¼, D. S. 22102; Alfred Jorgenson, Sept. 1, 1886; Sept. 3, '86; paid Nov. 22, 1886.											
N.W. ¼, D. S. 21332; Hans Sorenson, May 21, '86; May 26, '86.											
S. E. ¼ of N. E. ¼ & N. ½ of S. E. ¼ & S. W. ¼ of S. E. ¼.				160		1 25 200	George C. Adams.....	Sept.	19, 1887	13286	D. S. 20911.
S. W. ¼.....				160		Agr. coll. scrip.....	George W. Pennman..	March	1, 1887	1722	D. S. 21469.
Void.....				160		Timber culture act..	Chas. Gailhard.....	Nov.	27, 1885	318	
Void.....				160		Homestead act.....	Chas. Gailhard.....	Nov.	27, 1885	7249	
12											
All of sec.....							State lien selec	Dec.	22, 1869	2447	
N ½.....							State lien selec.....	Dec.	22, 1869	2447	App'd Jan'y 3, 1871, list 19.
S. ½.....							" " "	"	" "	2447	App'd Apr. 18, 1873, list 26.
25 13											
E. ½ of N. W. ¼ & E. ½ of S. W ¼.				160		1 25 200	James W. Caldwell.....	Dec.	22, 1887	13889	D. S. 23430.
				160		Timber culture act..	Harry J. Cornell	Aug.	24, 1886	548	Canceled by relinquishment Feb'y 21, 1887, at 10 a. m.
Void. Case set for May 24, '88, before W. M. Parker, N. P.				160		Homestead act.....	Emil Williams	Nov.	20, 1885	7211	Attached by Germain Cummings Mar. 1, '88.
N. E. ¼. For'd to com'r Nov. 16, '88.				160		Timber culture act..	William B. Kreger.....	Feb'y	21, 1887	614	Attached by Germain Cummings Mar. 31, '88.
				160		Homestead act.....	William B. Kreger.....	Feb'y	21, 1887	8420	Canceled by relinquishment June 18, 1887, at 10 a. m.
Void.....				160		Homestead act.....	Joseph Denwell	Nov.	21, 1885	7216	

EXHIBIT B.

Township No. 22 South, Range No. 10 East, M. D., District of ——.—Continued.

Description of tract.				Contents.		Rate per acre.		Purchase-money.		Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
Void	.....	.....	.....	160	.....	Timber culture act..				Emil Williams.....	Nov. 20, 1885	306				
S.E. ¼, D. S. 21711; Thos. Lynch, Apr. 24, '86; June 24, '86.																
W. ½ of N. W. ¼ & W. ½ of S. W. ¼. Paid.	.....	...	.....	160	.....	Homestead act.....				Mrs. Kate Lonigan.....	Nov. 8, 1886	8187				
				160	.....	Homestead act.....				Harry J. Cornell.....	Aug. 24, 1886	7996	Canceled by relinquishment Feb'y 21, 1887, at 10 a. m.			
All of section	14	.....	.....	.....	.....	.....				State lien selec.....	Dec. 22, 1869	2444	App. Jan'y 3, 1871, li-t 19.			
N. W. ¼ of N. E. ¼ & N. ½ of N. W. ¼ & S. W. ¼ of N. W. ¼. H'ed, offered May 24, '86, at 9 a. m., by Thos. Beman.	15	.....	.....	.....	.....	.....				Hearing ordered for June 25, '86, before Co. cl'k of Montery Co. to determine priority of right.						
N. W. ¼ of N. E. ¼ & N. ½ of N. W. ¼ & S. W. ¼ of N. W. ¼.	.....	.....	.....	160	.....	Homestead act.....				Thomas Brinon.....	March 19, 1887	8521				
Obsolete	.....	.....	.....	160	.....	Homestead act.....				Roy Grimes	Nov. 10, 1885	7103	Canceled by letter "C" Nov. 26, 1886.			
S. E. ¼ of N. W. ¼	.....	.....	.....	40	.....	Timber culture act..				Thomas Brinon.....	Mar. 19, 1887	623				
S. W. ¼ of N. E. ¼, W. ½ of S. E. ¼ of S. E. ¼.	.....	.....	.....	160	.....	1	25	200		William Briman.....	Aug. 14, 1888	15255	D. S. 20937.			
E. ½ of N. E. ¼ & N. E. ¼ of S. E. ¼.	.....	.....	.....	120	.....	Timber culture act..				Thomas J. Lanigan....	Aug. 24, 1886	549				
S. W. ¼, D. S. 20892; Elizabeth McLaughlin, Apr. 21, '86; May 24, '86.																
				160	.....	Homestead act.....				Charles Swain.....	May 24, 1886	7577	Canceled by relinquishment Feb'y 12, 1887, at 9.45 a. m.			
Void	 16	.....	.....	160	.....	Timber culture act..				Frank McLaughlin....	Nov. 23, 1885	310				

School land:											
	17										
	18										
	19										
	20										
	21										
Lots 1, 2, & 3	.....	..	....	83	18	Timber culture act..	George Dudley..	Nov.	11, 1885	269	Canceled by letter "C" Oct. 13, 1886.
Lots 1, 2, & 3, D. S. 2156; George Dudley, Jr., May 7, '86; June 16, 1886.											
	22										
All of section	.....	.....	.....	.....	.....	.....	State lien selec.....	Dec.	24, 1869	2455	App. Jan'y 3, 1871; list 19.
S. E. ¼ of S. E. ¼ & (1)	.....	.....	.....	280	.....	State selec. paid for..	Guillame Abadie.....	Apr.	3, 1883	8913	Patented Oct. 1, 1883.
26											
	23										
E. ½ of N. E. ¼ & E. ½ of S. E. ¼											
W. ½ of N. E. ¼ & E. ½ of N. W. ¼	.....	....	....	160	.....	Homestead act.....	Miss Annie McLaughlin.	Aug.	16, 1886	7975	Com'd June 28, 1887; C. E. 12963.
Void	.....	.....	.....	160	.....	Homestead act.....	Miss Ellen McLaughlin.	Aug.	16, 1886	7976	Com'd June 28, 1887; C. E. 12966.
W. ½ of N. W. ¼ & W. ½ of S. W. ¼	.....	.....	.....	160	.....	Timber culture act..	Gaillame Abadie.....	Nov.	20, 1885	305	
W. ½ of S. E ¼ & E. ½ of S. W. ¼	.....	.....	.....	160	.....	Homestead act.....	Thomas J. Lanigan....	Aug.	9, 1886	7946	Com'd June 28, 1887; C. E. 12965.
Void	.....	.....	.....	160	.....	Timber culture act..	John G. Tillman.....	May	26, 1886	470	
				160	.....	Homestead act.....	Gaillame Abadie.....	Nov.	20, 1885	7209	
	24										
All of sec	.....	.....	.....	.....	.....	.....	State lien selec..	Dec.	22, 1869	2446	
N. E. ¼ & E. ½ of S. E. ¼	.....	.....	.....	.....	.....	.....	State lien selec.....	Dec.	22, 1869	2446	App'd Jan'y 3, 1871, list 19.
W. ½ of S. E. ¼	.....	.....	.....	.....	.....	.....	" "	"	" "	2446	" Nov. 12, 1873, " 28.
W. ½	.....	.....	.....	.....	.....	.....	" "	"	" "	2446	" Jan'y 29, 1876, " 38.
	25										
Void..	.....	...	.....	160	.....	Homestead act.....	Amable F.G. de Vercy.	Nov.	21, 1885	7213	
W. ½ of N. W. ¼ & W. ½ of S. W. ¼	.....	.....	.....	160	.....	Homestead act.....	Damian Marchant.....	May	24, 1886	7508	Com'd June 8, 1887; C. E. 12867.
S. ½ of N. E. ¼ & E. ½ of N. W. ¼	.....	.....	.....	160	.....	Timber culture act..	Patrick A. Maher.....	Aug.	24, 1886	552	
Void	.....	.....	.....	160	.....	Timber culture act..	Amable F.G. de Vercy.	Nov.	21, 1885	308	
N. ½ of S. E. ¼ & E. ½ of S. W. ¼	.....	.....	.....	160	.....	Homestead act.....	Bernardo Andrade.....	June	1, 1886	7708	
Void	.....	.. ..	.....	160	.....	Homestead act.....	Peter Claverl.....	Nov.	28, 1885	7256	
	26										
All of sec	.....	.....	.....	.....	.....	.....	State lien selec.....	Dec.	22, 1869	2447	
N. E. ¼ of N. E. ¼ & W. ½ of N. E. ¼	.....	.....	.....	.....	.....	.....	State lien selec.....	Dec.	22, 1869	2445	App'd July 1, 1871, list 22.
S. E. ¼ of N. E. ¼ & S. E. ¼ & W. ½	.....	.....	.....	.....	.....	.....	" "	Jan'y	17, 1877	3514	" Mar. 13, 1877, " 42.
	27										
N. E. ¼	.....	.....	.....	160	.....	Homestead act.....	Rafael B. Bravo.....	Dec.	15, 1886	8276	
Void	.....	.....	.....	80	.....	Timber culture act..	Rafael B. Bravo.....	Nov.	23, 1885	311	
				80	.....	Timber culture act..	Rafael B. Bravo.....	June	1, 1886	477	Canceled by relinquishment Dec. 15, 1886, at 9 a. m.

EXHIBIT B.

Township No. 22 South, Range No. 10 East, M. D., District of ——.—Continued.

Description of tract.				Contents.		Rate per acre.		Purchase-money.		Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
Lots 1 & 2	.....	.....	.....	64	60	1	25	80	75	Rafael B. Bravo	Dec. 14, 1886	12121	D. S. 20893.			
Lots 3 & 4 & E. ½ of S. E. ¼	.....	.....	.....	137	80	1	25	172	25	Frank McLaughlin	Mar. 7, 1887	12491	D. S. 20891.			
	28															
	29															
	30															
	31															
	32															
	33															

End of Exhibit B. U. S. attorney.

HERRMANN & SOTO,
Attorneys for Defendant.

Endorsed: Agreed statement of facts. Filed March 15, 1889. L. S. B. Sawyer, clerk.

27 At a stated term, to wit, the February term, A. D. 1889, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 22nd day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable Lorenzo Sawyer, circuit judge; Honorable George M. Sabin, U. S. district judge, district of Nevada.

Order Allowing Appeal.

THE UNITED STATES OF AMERICA
vs.
GUILLAUME ABADIE. } No. 9812.

On motion of Herrmann & Soto, Esqs., solicitors for respondents, it is ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein be, and the same is hereby, allowed, and that a certified transcript of the record and all proceedings herein be forthwith transmitted to said Supreme Court of the United States. It is further ordered that a bond for costs and damages on appeal be filed in the sum of one thousand dollars.

28 *Bond on Appeal.*

In the Supreme Court of the United States of America.

GUILLAUME ABADIE, Appellant,
vs.
THE UNITED STATES, Appellees.

Know all men by these presents that we, Ferdinand Brassy and Em. Meyer, are held and firmly bound unto the above-named appellees, the United States, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said United States, appellees; to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the twenty-second (22d) day of April, 1889.

The condition of this obligation is such that whereas the said Guillaume Abadie, the above-named appellant, has taken an appeal to the Supreme Court of the United States to reverse the decree filed and entered by the circuit court of the United States of America of the ninth judicial circuit, northern district of California, in the suit entitled "The United States, plaintiffs, *versus* Guillaume Abadie, defendant, number 9812," which said decree was filed and entered in said circuit court on the 15th day of March, 1889:

Now, therefore, if the above-named Guillaume Abadie, appellant, shall prosecute his said appeal to effect and answer all damages and

costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

FERDINAND BRASSY. [SEAL.]
EM. MEYER. [SEAL.]

Signed and delivered in the presence of—

—— ——.

29 UNITED STATES OF AMERICA, } ss:
District of California, }

Ferdinand Brassy, being duly sworn, deposes and says that he is a householder in said district, and is worth the sum of one thousand dollars ($1,000.00) in lawful money of the United States of America, exclusive of property exempt from execution and over and above all debts and liabilities.

FERDINAND BRASSY. [SEAL.]

Subscribed and sworn to before me this twenty-fifth day of April 1889, at the county of Santa Clara, State of California, within said district.

J. R. PATTON,
Notary Public in and for the County of Santa Clara, State of California.

UNITED STATES OF AMERICA, } ss:
District of California, }

Em. Meyer, being duly sworn, deposes and says that he is a householder in said district, and is worth the sum of one thousand dollars ($1,000.00) in lawful money of the United States of America, exclusive of property exempt from execution and over and above all debts and liabilities.

EM. MEYER. [SEAL.]

Subscribed and sworn to before me this twenty-second (22d) day of April, 1889, at the city and county of San Francisco, State of California, within said district.

[SEAL.] THOS. M. O'BRIEN,
Notary Public in and for the said City and County.

Endorsed: The form of the within bond and the sufficiency of the sureties therein are hereby approved this 26th day of April, 1889. Geo. M. Sabin, district judge of the United States for the dist. of Nevada, acting as circuit judge for northern dist. of California. Filed April 26, 1889. L. S. B. Sawyer, clerk.

30 *Affidavit as to Jurisdictional Amount.*

In the Circuit Court of the United States for the Ninth Circuit in and for the Northern District of California.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
GUILLAUME ABADIE, Defendant. } No. 1912.

On appeal to the United States Supreme Court.

UNITED STATES OF AMERICA,
Northern District of California, } *ss:*

Guillaume Abadie, being duly sworn, deposes and says that he is the Guillaume Abadie above named, and that an appeal has been taken by him to the Supreme Court of the United States from the decision and decree made, filed, and entered in this suit on the 15th day of March, 1889.

That in and by said decree he is directed to remove a certain fence therein mentioned enclosing, among other sections, sections 5, 3, 2, 1, 13, 25, 27, 21, and 9, all in township 22 south, range 10 east, Mount Diablo meridian, and particularly mentioned in said decree; that the said fence is a good and substantial picket fence erected upon said sections by this affiant in the year 1873; that the cost of the construction of the said fence, including therein the material and labor, was the sum of $872.22 per mile; that since said year of 1873 and until about the time of the commencement of this suit this affiant kept and maintained said fence in good order and repair; that the extent of the fence which this affiant is directed by said decree to remove and which encloses and is built upon said sections is ten miles; that the value of the said fence at the time of the commencement of this suit and at the trial thereof was not less than $650.00 per mile.

That the said fence is an unusually good and substantial fence and the pickets thereof are solidly driven into the ground to the extent of about a foot and a quarter or more.

GUILLAUME ABADIE.

Subscribed and sworn to before me this 14th day of September, A. D. 1889.

F. D. MONCKTON,
Commissioner U. S. Circuit Court,
Northern District of California.

(Endorsed:) Filed Sept. 14th, 1889. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

31 In the Circuit Court of the United States of the Ninth Judicial Circuit, Northern District of California.

THE UNITED STATES OF AMERICA, Complainants and Appellees,
v.
GUILLAUME ABADIE, Respondent and Appellant. } No. 9812.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, northern district of California, do hereby certify that the foregoing thirty (30) written and printed pages numbered from 1 to 30, inclusive, together with the traced map or plat hereto annexed, are a full, true, and correct copy of the record and of all proceedings in the above and therein entitled suit, and that the same together constitute the transcript on appeal to the Supreme Court of the United States therein.

Witness my hand and the seal of said circuit court this seventh day of October, A. D. 1889.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

L. S. B. SAWYER, *Clerk.*

Endorsed on cover: N. California C. C. U. S. No. 1470. Guillaume Abadie, appellant, *vs.* The United States. Filed October 22, 1889.

14921826 1

Office Supreme Court U. S.
FILED.
APR 11 1893
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

GUILLAUME ABADIE,
Appellant,
vs.
THE UNITED STATES,
Appellee.

October Term, 1892.
Docket No. 260.

Brief on Behalf of the Appellant.

JAMES HERRMANN,
Of Counsel for Appellant.

Filed this ..... day of April, 1893.

..... *Clerk.*

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1892.

Docket No. 260.

GULLAUME ABADIE,
Appellant,

vs.

THE UNITED STATES,
Appellee.

On appeal from the Circuit Court of the United States, Ninth Circuit, Northern District of California.

Brief on Behalf of the Appellant.

Statement of the Case.

1. The appellee commenced this action, September 14, 1888, to obtain a determination by the Court below that a fence enclosing certain lands described in the complaint, constituted an unlawful fence within the meaning of the Act of Congress of February 25, 1885, (23 U. S., Statutes at Large, p. 321), entitled "An "Act to prevent unlawful occupancy of the

" public lands," and to compel the appellant to remove the same. (Trans., fols. 1–3.)

2. September 14, 1888, a summons, in form such as would be issued in an ordinary common law action under the State practice, was issued in this action, and was served on the defendant September 29, 1888. (Trans., fols. 4–5.)

3. On October 23 and 24, 1888, respectively, separate notices of special appearance coupled with a notice of motion to set aside the service of, and to quash, the summons, were served and filed on behalf of the appellant.

The grounds of motion were substantially:

(*a.*) That the suit is one in equity;

(*b.*) That the process issued should have been a *subpœna* and not a summons; and

(*c.*) That jurisdiction of the person of appellant was not obtained by the service of the summons.

The motion was based on matters appearing of record in the cause. (Trans., fols. 16–18.)

[NOTE—The first notice (Trans., fols. 16–17) was abandoned presumably because the day for which the motion was noticed was not *Monday* but *Sunday* the *28th* of October.]

4. Afterwards, November 26, 1888, the Court denied the appellant's motion to set aside the service of, and to quash, the summons. (Trans., fol. 19.)

5. The appellant filed a demurrer to the complaint (Trans., fols. 5–6) which was overruled by the Court. (Trans., fol. 7.)

6. An answer denying all the allegations of the complaint was afterwards filed by the appellant. (Trans., fol. 8.)

7. By a stipulation a trial by jury was expressly waived. (Trans., fol. 9.)

8. The cause was tried upon an agreed statement of facts. (Trans., fols. 20–26, pp. 13–20.)

9. The Court filed its findings and conclusions of law adopting the agreed statement of facts, and thereby decided in accordance with the prayer of the complaint. (Trans., fols. 9–10.)

10. A decree in accordance with the findings and conclusions of law was signed, filed and entered March 15, 1889. (Trans., fols. 11–13.)

11. An appeal from the decree was allowed in open Court, April 22, 1889. (Trans., fol. 27.)

12. A proper and sufficient bond on appeal was approved and filed April 26, 1889. (Trans., fols. 28–29.)

13. An affidavit as to the jurisdictional amount was made, and filed in the Court below, Sept. 14, 1889. (Trans., fol. 30.)

14. The Transcript of the record was filed in this Court October 22, 1889. (Trans., fol. 31.)

[NOTE—It is apparent from the foregoing—which appears by the Transcript—that in view of the ruling of the Court below on the motion to set aside the service of, and to quash, the summons, the action was treated by the parties, until the rendition of the decree, as one at law. No other course was open to the appellant until the entry of the decree, which he regarded as one in equity, reviewable on appeal and not on writ of error.]

Assignment of Errors.

The Appellant will rely on, and hereby specifies the following particulars as showing that the lower Court erred, to-wit:

1. In overruling appellant's motion to set aside the service of summons.

2. In overruling appellant's motion to quash the summons.

3. In finding and deciding that any part or portion of the fence described in the complaint, findings and decree, is unlawful.

4. In finding and deciding that the appellant unlawfully kept and maintained said fence or any portion thereof.

5. In deciding by its *decree* that said fence or any portion thereof is unlawful.

6. In directing by its *decree* that the appellant remove said fence or any portion thereof.

7. Especially in directing the appellant by its *decree* to remove any portion of the fence on sections 5 (five), 9 (nine), 21 (twenty-one) and 27 (twenty-seven) along the line of the confirmed private Mexican grant, the *San Bernardo* Ranch, as appears on the Diagram, Plaintiff's Exhibit A, annexed to the agreed statement of facts. (Trans. pp. 14–15.)

ARGUMENT.

Statement of the Facts.

I.

The *complaint* alleged the jurisdictional facts, and, among other material things—

(*a.*) That certain nine (9) whole sections

and four (4) fractional sections of land, were public lands of the United States, which had theretofore been surveyed and sectionized, and that plats thereof were on file in the proper U. S. Land Office, and that such lands were subject to settlement and entry under the public land laws of the United States. (Pars. II, III, Trans., fol. 1.)

(*b.*) That an affidavit as required by section 2 of the Act of Congress of February 25, 1885, [23 U. S. Statutes at Large, 321] had been filed, and then remained on file, with the proper United States attorney. (Par. IV, Trans., fols. 1–2.)

(*c.*) That the appellant had constructed and erected a fence constituting a continuing and connecting enclosure, whereby all the above mentioned sections were enclosed. (Par. V, Trans., fol. 2.)

(*d.*) That ever since its erection the appellant had kept in repair, maintained and controlled, and was still keeping in repair, maintaining and controlling said fence, thereby unlawfully enclosing said lands, without any claim or color of title, made or acquired in good faith, or an asserted right thereto, by or under claim made in good faith with a view to entry

thereof at the proper land office under the general laws of the United States. (Par. VI, Trans., fol. 3.)

(*e.*) That by means of said fence the appellant was preventing persons from peaceably entering on said lands, from establishing a settlement and residence thereon, and a free passage over the same. (Par. VII, Trans., fol. 3.)

(*f.*) That appellant had not gone upon said lands, or improved or cultivated the same, claiming to do so under the land laws of the United States; and that there were more than 160 acres of public lands unlawfully enclosed within the above mentioned enclosure. (Pars. VIII, IX, Trans., fol. 3.)

II.

The complaint *prayed* that it be adjudged:

1. That said fence was an unlawful enclosure.

2. That the same be destroyed by the marshal, unless removed by the appellant within five days after the order of the Court, etc., and for costs.

III.

The answer, we have seen, was a general denial.

IV.

From the *agreed statement of facts*, it appears—

1. The fence in question was erected by appellant in 1873, and is described on the *Diagram*, annexed to said statement (Trans., fols. 27 to 23), as running from A to B, to C, to D, and back to A, said letters being written in red ink.

Said fence has always stood at the same place; it has always been and is yet a good, substantial fence, sufficient to protect the land enclosed by it from the intrusions of stock. It has been, and is now claimed by the appellant.

2. From A to B, the fence runs along the line between the lands described in the complaint, and a confirmed private Mexican grant, called the *San Bernardo* Rancho, named *San Bernardino* in the complaint and statement, by reason of a clerical error.

3. Within the enclosure there are $10{,}971\frac{21}{100}$ acres; of these $4{,}998\frac{10}{100}$ acres, consisting of all the even numbered sections, except section 2, are owned by the appellant—3,070 acres of which latter were owned by him before the fence was erected; $5{,}585\frac{73}{100}$ acres have been entered under the homestead or timber culture

laws or filed on or finally paid for under the pre-emption laws; and the remainder—only $395\frac{38}{100}$ acres—were open to filing, entry and settlement under the general land laws of the United States.

4. At all times since the erection of the fence, there have been three gates opening into the enclosure, which were kept unlocked.

5. From the Exhibit B, annexed to the statement (Trans., fols. 23–26), it appears that entries or filings, or final payments were made under the homestead or timber culture, or pre-emption laws, for land in sections 5–3–2–1–13–25–27–21 and 9, along the line, and inside of the fence in question, which constitutes the outer boundary lines of said sections, which latter are the only sections along the fence to which appellant has no title.

6. The *decree* of the Court is, as has been stated above, in accordance with the prayer of the complaint. It compels appellant to remove the fence from every section of land other than those which he himself owns.

POINTS AND AUTHORITIES.

I.

The Suit is One in Equity.

Considering the custom existing in regard to the use of the public lands by the public

(*Buford* v. *Houtz*, 133 U. S., 320, 326–8), the matters charged in the complaint constitute either a *purpresture* or a *nuisance*, or both. (Wood on Nuisances, secs. 81 to 97, *passim*.) In either case, under the scope or theory of the complaint, coupled with the *prayer* therein, which latter serves to characterize the nature of the action (Harrell *v.* Gray, 10 Neb., 186; N. C. etc. Co., *v.* Kidd, 37 Cal., 304; Arrington *v.* Liscom, 34 Cal., 371; People *v.* Mier, 24 Cal., 61; Brooks *v.* Carpenter, 53 Cal., 287–8), the relief sought was obtainable only in a Court of Chancery.

State *v.* Goodnight, 70 Tex., 692, and authorities cited:

S. C., 11 Southwestern R., 119.

U. S. *v.* Ranch Co., 26 Fed R., 218.

U. S. *v.* Ranch Co., 25 Fed. R., 465.

U. S. *v.* Cattle Co., 33 Fed. R., 323–4.

In the last case Mr. Justice Brewer of this Court, at that time Circuit Judge, said (page 330):

"I have thus far considered this case with-
"out reference to the Act of February 25, 1885.
"That Act denounces enclosures of public
"lands, and in terms, authorizes suits by in-
"junction or otherwise; but that Act does not
"purport to take away any jurisdiction from
"the Circuit Courts, or to limit their powers,

" sitting as Courts of Chancery. Its probable " purpose and intent was to call the attention " of the government to the increasing evil of " fencing up the public domain, and perhaps, " also, to vest jurisdiction in some Courts which " may not have had jurisdiction over such liti- " gation."

The contention of appellant is in strict accordance with the quotation just made. He maintains that the Circuit Court—as a Court of Chancery, had jurisdiction of the subject matter of the action, independent of the Act of February 25, 1885. The mere fact that the complaint purports to be based on the provisions of that Act, is immaterial. The *essential nature* or *character* of the case made by the complaint, the relief *prayed* for, and the relief actually *granted* by the decree, all stamp the suit as one cognizable on the equity side of the Circuit Court. Hence the decree—being one proper only in an equity suit (see Willard *v.* Wood, 135 U. S., 306)—is reviewable on appeal.

Idaho Co. *v.* Bradbury, 132 U. S., 509.

Colgate *v.* Compagnie, 23 Fed. R., 82–3–4.

Marine Co. *v.* Bradley, 105 U. S., 175–183.

Duncan *v.* Greenwalt, 10 Fed. R., 800–1

Fidelity Trust Co. *v.* Gill Car Co., 25 Fed. R., 737–749.
Holmes *v.* Railway Co., 5 Fed. R., 75–84.
Holland *v.* Challen, 110 U. S., 15.
Cf. Fussell *v.* Gregg, 113 U. S., 550.
Van Norden *v.* Morton, 99 U. S., 378.
Lane *v.* Marshall, 1 Heisk., 30.
State *v.* Alder, 1 Heisk., 549.
Smythe *v.* Henry, 41 Fed. R., at 715.
Phipps *v.* Kelley, 6 Pac. R , 707.
Payne *v.* Bullard, 23 Miss., 88.
P. C., 55 Amer. Dec., 74, and note.

II.

The motion of appellant to set aside the service of, and to quash, the summons, should have been sustained.

Since the suit is one in equity, the proper process whereby to obtain jurisdiction of the person of appellant was a subpœna.

United States Supreme Court Rules in Equity, Rule VII.

An improper process having been served on appellant, he seasonably objected thereto by appearing specially to urge his objection.

National F. Co. *v.* Moline M. W. Co., 18 Fed. R., 863.

U. S. *v.* American B. T. Co., 29 Fed. R. 17.

Romaine *v.* Union Ins. Co., 28 Fed. R., 625.

Reinstadler *v.* Reeves, 33 Fed. R., 308.

It is manifest that the ruling of the Court on the motion did not, as it could not, change the essential character of the suit from that of one in equity to one at law.

See Willard *v.* Moore, 135 U. S., 309.

III.

The Decree is Erroneous.

1. *The fence as it is of pickets, is a part of the realty.*

Pennybecker *v.* McDougall, 48 Cal., 163–4.

Collins *v.* Bartlett, 44 Cal., 383.

Part of this fence on the west, constitutes the division line between the alleged public lands described in the complaint and a private Mexican grant. It is clear that appellant cannot be compelled to remove any portion of this line of fence, even if he himself were the owner of the Mexican grant. No one, without *his* permis-

sion or license, could claim the right to pass over, or across the grant to or from the alleged public lands. There is no proof as to who is the owner of the grant. But whoever he may be, he has an interest in the fence as constituting a part of the soil; and his rights (if *he* be not the appellant) cannot be affected by the decree without being made a party. If appellant is the owner of the grant, he certainly had the right to fence his grant along or on its boundary lines.

There is no proof as to who owns the lands outside of the fence in question on the north, east or west. They may belong to private parties other than appellant; and he cannot, of course, be compelled to remove fences belonging to such parties. If they are his lands, the fence on the boundaries last mentioned, is his property, or at least, he has an interest in it as being a part of the soil, and he cannot be ordered to remove it any more than the fence along the Mexican grant.

U. S. *v.* Brandenstein, 32 Fed. R., 738.
U. S. *v.* Douglas, etc. Co., 22 Pac. R., 92.

Settlers who have filed on, or entered or paid for the lands along, and inside the fence, under

the United States land laws, have certainly a right to object to the removal of the fence by appellant where *their* interests might thereby be affected. In attempting to obey the decree of the Court, appellant might find himself involved in a multiplicity of suits. The marshal himself would be in no better position.

2. *The Act of February 25, 1885, is inapplicable to this case.*

U. S. *v.* Brandenstein, 32 Fed. R., 738.
U. S. *v.* Elliot, 7 Utah, 389.
S. C., 26 Pac. R., 1117.

The fence having been erected in 1873, the Act as to it would be *retroactive* as well as *ex post facto*, since the very facts alleged in the complaint might become the foundation for a criminal prosecution. (Sec. 4 of the Act.)

U. S. *v.* Douglas etc. Co., 22 Pac. R., 92.
Bartol *v.* Eckert, 33 Northeastern R., 294.

3. *The evidence is insufficient to sustain the decree.*

The only evidence in the case introduced was the agreed statement of facts. There is nothing to show that any one was ever prevented from entering on to the lands in ques-

tion for any purpose, or to settle thereon or to pass over the same. As in the *Brandenstein* case, *supra*, there were gates in the fence which were kept unlocked. As in that case (the record shows it, the report though cited does not) there were about 400 acres which were open to settlement, filing on entry. All the other lands had practically become segregated from the public domain and ceased to be *public lands*.

There is no evidence showing the circumstances uuder which appellant erected the fence. He may have done it under a claim of right so as to bring himself within the provisions of the Act, and justify its erection. There is no evidence that he has kept up or maintained the fence since its erection. It was not for appellant to prove the affirmative of the negative allegations in the complaint. At least not until *some* evidence had been introduced by appellee *tending* in some decree to prove the negative. (See U. S. *v.* Felderward, 36 Fed. R., 490).

CONCLUSION.

Anomalous as may appear the practice developed by the record in this case, owing to the

circumstance that the lower Court was invested with a dual jurisdiction—having power to administer relief in equity as well as at law, though *not in the same action*, it is nevertheless submitted that errors were committed for which the decree should be reversed.

Dated, San Francisco, Cal.,
April 5th, 1893.

Respectfully,

JAMES HERRMANN,
of Counsel for Appellant.

149 U.S. 261

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Supreme Court of the United States.

OCTOBER TERM, 1892.

GUILLAUME ABADIE, APPELLANT,
v.
THE UNITED STATES.
} No. 260.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

WM. A. MAURY,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1892.

GUILLAUME ABADIE, APPELLANT,
v.
THE UNITED STATES. } No. 260.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

This is a summary proceeding under the act of Congress of February 25, 1885, entitled "An act to prevent unlawful occupancy of the public lands" (23 Stat., 321).

The complaint filed by the United States, stripped of details unimportant here, alleges that the defendant, Abadie, has erected an inclosure within the limits of which are included some 160 acres of land belonging to the public domain, in the county of Monterey, California, to which land so inclosed the defendant urges no claim, and in which he has no right or color of title; wherefore it is prayed that the said inclosure may be adjudged un-

lawful and ordered to be removed by the defendant, and, failing that, destroyed by the marshal (pp. 1–3).

MOTIONS TO QUASH, ETC.

It was sought to defeat the proceeding by certain objections of a purely dilatory character, for the purposes of which the defendant's counsel entered a special appearance (p. 10), and then moved to quash the summons, and to set aside the service of the summons and quash the same, on several grounds, namely: (1) Because the proceeding was a suit in equity and not an action at law; (2) that the court could obtain jurisdiction of defendant's person by subpœna only; (3) that the court had obtained no jurisdiction of defendant's person (pp. 11, 12).

These motions were denied and the defendant was given ten days within which to answer (p. 13).

DEMURRER.

On December 6, 1888, the defendant demurred to the petition, and on the 24th of the same month the demurrer was overruled, but with leave to answer (pp. 4, 5).

ANSWER.

On January 11, 1889, the defendant filed an answer denying "generally and specifically each and every allegation" of the complaint (pp. 5, 6).

WAIVER OF TRIAL BY JURY.

The parties stipulated in writing to dispense with a jury and submit the matters of law and fact to the court (p. 6).

CASE STATED AND CONCLUSIONS OF LAW.

The case came on to be heard on March 1, 1889, and the court, having adopted the case stated as its findings of fact, on March 15 announced the following conclusions of law therefrom:

1. That the fences in question were unlawful in so far as they inclosed public lands not owned by defendant and to which he is not seeking to acquire title under the provisions of the acts of Congress relative thereto.

2. That said fences are unlawfully maintained by defendant, and must be removed by him.

3. That plaintiff is entitled to a judgment as prayed for in the complaint (pp. 6, 7).

DECREE.

On March 15, 1889, a decree was accordingly entered, giving the relief prayed for in the complaint (p. 8), and from this decree an appeal was prayed for and allowed on April 22, 1889, (p. 21).

ARGUMENT.

NO JURISDICTION OF THE APPEAL.

The matter in controversy here is the public land which the defendant has appropriated by inclosure, and, apparently, segregated from the rest of the public domain, to the damage of the Government and the inconvenience of settlers.

The defendant *makes no claim whatever to the land claimed by the United States* to be public and illegally included within the said inclosure, as sufficiently appears by his

entirely technical defense, but he attempts to lay a foundation for the appellate jurisdiction of this court by introducing into the record his affidavit *as to the value of the fence* (p. 23). But the fence is in no wise in controversy, for as to it the decree directs defendant to remove it within thirty days or it will be destroyed, thus recognizing it as his property, to do with it as he may deem proper.

The defendant's resistance to this suit being on account of the fence, which the United States does not claim, in any way, and not on account of the object of suit, the public land situated within the inclosure to which, however, the defendant sets up *no claim of any sort*, it would seem that the appeal must be dismissed out of this court, there being absolutely nothing of value in controversy between the parties.

THIS IS NOT A SUIT IN EQUITY.

The effort below was to have the service of the *summons* on defendant set aside and the summons quashed on the ground that the suit was in equity, and that the *subpæna* was the only process by which a court of equity could obtain jurisdiction of a defendant.

This is certainly a very technical objection to be raised in a court of conscience, and, it is presumed, would not be countenanced by any court.

But, however that may be, the present is not a suit in equity. It is a statutory proceeding, and is *sui generis*. It is true this court has said that a proceeding under the act of March 3, 1885, such as the present one, is "a summary proceeding more in the nature of a suit in equity" than an action at law (*Cameron* v. *United States*, 147 U. S.),

but that does not mean that it is a suit in equity in the proper sense, or in a sense that would make the technical objection to the form of the original process at all tenable.

Whether equity would have had jurisdiction in such a case as this is quite beside the true question, namely, Is the present suit a proceeding within the act of March 3, 1885? If so, it does not rest on any category of equity jurisdiction, but *on the statute alone*, although its analogy to an equity proceeding may warrant the courts in looking somewhat to the procedure in equity for guidance.

The point based on the assertion that the fence in question is a part of the realty necessitates for its support the *assumption* that the fence was fixed in the ground, for there in not a particle of evidence on the subject.

If there is any reason why defendant might be made a wrongdoer as to others by performing the decree ordering him to remove the fence, it should have been shown, and not presented to this court in the form of a hypothetical proposition.

The point that the act of March 3, 1885, which provides a summary remedy for a *previous wrong*, can not be applied to such previous wrong without being made *ex post facto*, hardly requires serious attention.

It is respectfully submitted that there is nothing in the record which seems to require a disturbance of the judgment.

WM. A. MAURY,
Assistant Attorney-General.

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